

May 17, 2005

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B201  
Washington, DC 20554

**RE: *Ex Parte* Presentation in a Non-Restricted Proceeding  
Petition for Extension of Stay for Rules and Regulations Implementing the  
Telephone Consumer Protection Act of 1991 (CG Docket No. 02-278, FCC 03-  
153)**

Dear Mr. Chairman:

The Office of Advocacy of the U.S. Small Business Administration submits this letter in support of the Fax Ban Coalition's Petition for Further Extension of Stay<sup>1</sup> in the above-captioned proceeding. The Office of Advocacy encourages the Federal Communications Commission ("FCC" or "Commission") to grant a six-month extension of the stay of the unsolicited facsimile advertisement rules ("fax rules") adopted by the June 26, 2003 Report and Order<sup>2</sup> and stayed pursuant to the August 18, 2003 Order<sup>3</sup> and again in the September 15, 2004 Order.<sup>4</sup>

**1. Advocacy Background**

Congress established the Office of Advocacy in 1976 under Pub. L. No. 94-305 to represent the views and interests of small business within the Federal government. Advocacy's statutory duties include serving as a focal point for the receipt of complaints concerning the government's policies as they affect small business, developing proposals for changes in Federal agencies' policies, and communicating

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<sup>1</sup> *Petition for Further Extension of Stay* of the Fax Ban Coalition, CG Dkt. No. 02-278 (April, 15, 2005).

<sup>2</sup> *In the Matter of* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Report and Order*, CG Dkt. No. 02-278, FCC 03-153 (rel. July 3, 2003).

<sup>3</sup> *In the Matter of* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Order*, CG Dkt. No. 02-278, FCC 03-230 (rel. August 18, 2003).

<sup>4</sup> *In the Matter of* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Order*, CG Dkt. No. 02-278, FCC 03-230 (rel. September 15, 2004).

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these proposals to the agencies.<sup>5</sup> Advocacy also has a statutory duty to monitor and report to Congress on Federal agency compliance with the Regulatory Flexibility Act of 1980 (“RFA”), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”).<sup>6</sup> The Office of Advocacy (“Advocacy”) is an independent office within the U.S. Small Business Administration (“SBA”), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

## **2. The FCC Should Grant the Petitions to Extend the Stay for Six Months**

The Office of Advocacy believes that the Petition meets the FCC’s requirements for a stay and that it is in the public interest for the FCC to grant an additional six-month extension. Legislation amending the Telephone Consumer Protection Act of 1991 (“TCPA”) to reinstate the Established Business Relationship (“EBR”) exemption has been reintroduced to Congress. A six-month extension would provide the needed time for Congress to act and present legislation to the President to resolve this important issue.

Advocacy filed a letter in August 2003 in response to the Report and Order that recommended the Commission grant a stay of the enforcement of the fax rules.<sup>7</sup> Following the initial stay in 2003, Advocacy filed another letter in September 2004 that supported an extension of the stay.<sup>8</sup> In both letters, Advocacy reasoned that a stay was in the public interest, in part, because it allowed time for Congress to act.

Congress is acting on this issue. Senator Gordon Smith introduced legislation (S. 714) on April 6, 2005 that would reinstate the EBR exception but would require business faxes to include a notice on their first page providing recipients a cost-free mechanism to opt out of receiving future faxes from the sender. The full Senate Commerce, Science, and Transportation Committee approved S. 714 by voice vote on April 14.

As stated in our earlier letters to the Commission, without an extension of the stay, small businesses would need to take steps to obtain written consents from fax recipients with whom they have an existing business relationship in anticipation of the current June 30, 2005, deadline. The economic impact of this requirement on

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<sup>5</sup> 15 U.S.C. § 634(c)(1)-(4).

<sup>6</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. § 601 et seq.) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

<sup>7</sup> Letter from Thomas M. Sullivan to Chairman Michael J. Powell, in CG Dkt. No. 02-278 (Aug. 14, 2003).

<sup>8</sup> Letter from Thomas M. Sullivan to Chairman Michael J. Powell, in CG Dkt. No. 02-278 (Sept. 7, 2003).

small businesses will be significant, as shown by a U.S. Chamber of Commerce survey.<sup>9</sup>

Because the Junk Fax Prevention Act would provide meaningful regulatory relief to small businesses by reinstating the EBR exemption, Advocacy believes that it is in the public interest for the FCC to stay enforcement of the fax rules for an additional six months.

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<sup>9</sup> Letter from R. Bruce Josten, Chamber of Commerce of the United States of America, to Chairman Michael Powell in CG Dkt. No. 02-278 (April 28, 2004).

### **3. Conclusion**

Advocacy recommends that the FCC adopt the six-month stay, in order to minimize confusion and regulatory burdens on small businesses, and allow Congress additional time to act. The Office of Advocacy is available to assist the Commission in these efforts. For additional information or assistance, please contact me or Eric Menge of my staff at (202) 205-6533 or [eric.menge@sba.gov](mailto:eric.menge@sba.gov).

Sincerely,

/s/ Shawne Carter McGibbon  
for Thomas M. Sullivan  
Chief Counsel for Advocacy

/s/ \_\_\_\_\_  
Eric E. Menge  
Assistant Chief Counsel for Telecommunications

cc:

FCC Commissioner Kathleen Q. Abernathy

FCC Commissioner Michael J. Copps

FCC Commissioner Jonathan Adelstein

Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs